IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Second Appeal No.33 of 2007
With
Civil Application No.419 of 2007

Ankush Pundlik Chavan & ors. Appellants
Vs.
Subhash Bhikaji Kulkarni Respondent

Mr.M.D.Angal with Ms. Rukhmini Thokal for appellants.
Mr.A.S.Khandeparkar i/b. Mr.Pradeep B. Sawant for respondent.

CORAM: B.H.MARLAPALLE,J.

March 26, 2007.

P.C.

. Heard Mr.Angal with Ms. Rukhmini Thokal, the learned counsel for the appellants who are the original defendants in Regular Civil Suit No.97 of 1991. The said suit was filed for the relief of perpetual injunction restraining the defendants from obstructing the possession of the plaintiff over the suit property viz. a plot of land admeasuring 14 R. located in Survey No.203 A-1-A-1A, Hissa No.31-A. It was contended by the plaintiff that on the said plot which was also converted to non-agricultural, an old building was standing which they demolished so as to construct a new residential tenement and the defendants through their servants created obstructions and inspite of the legal notices having

been issued, they did not refrain from their activities and consequently the plaintiff was forced to file Regular Civil Suit No.97 of 1991. The plaintiff claimed that his father had purchased the 1/5th share of Shri Aatrmaram Sayajirao Rane from the total land admeasuring 6 acres and 3 gunthas from Survey No.203 and Survey No.204. This 1/5th share came to 1 acre and 16 gunthas. The defendants filed their Written Statement and contended that from Survey No.203, the plaintiff's father had purchased only 3 gunthas of land and not 15 gunthas or more and, therefore, they had their right to construct the proposed building only on the area admeasuring 3 gunthas. They further stated that out of the 15 gunthas land in Survey No.203, a plot of 8 gunthas land had merged with Hissa No.49 and the same was under the possession of the defendants father Pundalik Ramchandra Parit @ Chavan as a tenant. Before the trial Court they also brought on record a certified copy of the sale deed dated 1/2/1916 at Exhibit 138 as well as the extract of diary mutation no.642 vide Exhibit 139, extract of Bot Khat of Survey No.203 vide Exhibit 144, extract of Aakarphodpatrak of Survey No.203 vide Exhibit 145, 7/12 extracts of Survey No.203, Hissa No.49, Survey

No. 203-A-A-1-A, Hissa No.31 vide Exh. 169 and 170, extract of diary Mutation 1321 vide Exh. 171 and extract of Aakarphodpatrak of Survey No.203 vide Exh. 172 and 173. It was not disputed by the defendants that the plaintiff's late father had purchased 1/5th share of Shri Atmaram Rane from a total land in Survey Nos. 203 and 204 totally admeasuring 6 acres 3 1/4 gunthas. As per the plaintiff about 40 gunthas land was from Survey No.203 and remaining about 16 gunthas land was from Survey No. 204.

. Both the Courts below have concurrently held on appreciation of all the documentary evidence as well as the oral evidence of the plaintiff that the sale deed dated 1/2/1916 at Exhibit 138 was in respect of 16 gunthas land of the suit property and the contentions of the defendant that only 3 gunthas was purchased from the original owner has been discarded. It is pertinent to note that the defendants did not step in the witness box and the sale deed did not describe that there was any other tenant in the said land leave alone the defendants' predecessor. Both the Courts below, therefore, recorded as a matter of fact that the defendants had taken a false plea.

. Thus the decree granted by the trial Court and confirmed by the lower Appellate Court is based on a fact finding exercise on evaluation of the oral as well as documentary evidence. No substantial question of law would, therefore, arise for the consideration of this Court in the instant second appeal. The appeal is, therefore, dismissed in limine.

. Civil Application does not survive and the same stands dismissed.

(B.H